

IN THE
Supreme Court of the United States
OCTOBER TERM

No. 79-123

EDELMIRO MARTINEZ RIVERA

Petitioner,

versus

HECTOR COLON CRUZ, JOSE TRIAS MONGE,
CARLOS V. DAVILA, HIRAM TORRES RIGUAL,
ANGEL M. MARTIN, JORGE DIAZ CRUZ, CARLOS J.
IRIZARRY YUNQUE, AND ANTONIO S. NEGRON
GARCIA, INDIVIDUALLY

Respondents.

ON

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH OF
PUERTO RICO

MOTION FOR RECONSIDERATION

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Petitioner, Edelmiro Martínez-Rivera, respectfully
prays this Honorable Court that it reconsider the order
entered on October 1, 1979, denying in this case the petition
for a writ of Certiorari.

ARGUMENT

This court has repeatedly held, and just recently
emphasized in *Torres, Appellant, vs. Commonwealth of
Puerto Rico*, No. 77-1609 (June 18, 1979), that in the
exercise of its governmental powers Puerto Rico is subject,
1, to the First Amendment speech clause, *Balzac vs. Porto
Rico*, 258 U. S. 298 (1922) at page 314; 2, to the Due Process
Clause of either the Fifth or the Fourteenth Amendment,
Calero Toledo vs. Pearson Yacht Leasing Co., 416 U. S. 663,
n. 5 (1974); and 3, the Equal Protection guarantee of either

the Fifth or Fourteenth Amendment, *Examining Board vs. Flores de Otero*, 426 U. S. 572 (1976).

When Congress authorized the people of Puerto Rico to adopt a constitution, its only express substantive requirements were that the document should provide for a republican form of government and "include a bill of rights". Act of July 3, 1950, ch. 446, Section 2, 64 Stat. 319, 48 U.S.C. Sec. 731c. A constitution containing the language of the Fourth Amendment, as well as additional language reflecting this Court's exegesis thereof, P. R. Const., Art. 2, Section 10, was adopted by the People of Puerto Rico and approved by Congress. See Act of July 3, 1952, ch. 567, 66 Stat. 327. That constitutional provision remains in effect.

Besides, Congress has provided by statute that Puerto Rico must accord to all citizens of the United States the privileges and immunities of its own residents. Act of August 5, 1947, Sec. 7, 61 Stat. 772, 48 U.S.C. Set 737. See *Torres vs. Commonwealth of Puerto Rico*, (June 18, 1979), *supra*.

We submit, therefore, that the judgment of the Supreme Court of Puerto Rico the subject of the present Petition for a Writ of Certiorari may not stand on Respondent's claim that the Petition does not present a substantial Federal Question upon which this Honorable Court would have jurisdiction under 28 U.S.C. 1258(3).

As it clearly and affirmatively appears of record, the only question Petitioner raised in the instant case before the Supreme Court of Puerto Rico was that the Superior Court of San Juan decreed the dismissal of the action "without notice or hearing, in violation of Petitioner's constitutional guarantee to Due Process of Law", question on which it appears the Supreme Court of Puerto Rico refused to hear the herein Petitioner as Appellant below, saying simply that "Nothing in the law or in the Constitution required said /Superior/ Court to hear plaintiff before deciding that it lacked authority to act." See Appendix B to the Petition, pages 2a - 3a.

Obviously, precisely this cover-up statement with which the Supreme Court of Puerto Rico sought to impede the just disposition of the controversy, is, in our view, what gives life and substance to a Federal constitutional issue of concern by this Court.

As a Court of last resort of the Island, the Supreme Court of Puerto Rico can only act in accordance with all the limitations imposed not just by the Constitution and laws of Puerto Rico, but by the Constitution and laws of the United States of America, as well. The ethical issue raised in the herein petition based on Respondents' conceded participation in the consideration and decision of the appeal, acting as Justices of their own cause as appellees, is one thing that this Court should not overlook. When the image of the judiciary is tarnished, the moral authority of the Courts is critically undermined.

No one may deny that any act of any branch of the government of the Commonwealth of Puerto Rico in conflict with the Constitution of the United States or the Constitution of Puerto Rico would be null and void, and that any individual who considers himself aggrieved or injured thereby has a right to resort to the Courts for a remedy.

How appropriate to quote here what this Court observed in this respect, in *Marbury vs. Madison*, (1803) 1 Cranch 137, 2 L. Ed. 60:

"From these, and many other selections which might be made, it is apparent, that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

"Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in a special manner, to their conduct in their Official character. How immoral to impose it on them, if they were to be used as the instruments,

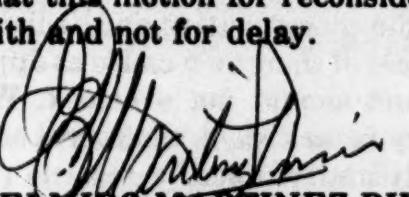
and the knowing instruments, for violating what
they swear to support!

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CONCLUSION

FOR THESE REASONS, Petitioner respectfully prays
this Honorable Court to reconsider and vacate its Order
denying in this case the petition for a Writ of Certiorari to
the Supreme Court of the Commonwealth of Puerto Rico.

I hereby certify that this motion for reconsideration is
presented in good faith and not for delay.



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CERTIFICATE

I certify that I have served the foregoing Motion to
Héctor A. Colón-Cruz, Solicitor General, Attorney for
Respondents, Department of Justice, Box 192, San Juan,
Puerto Rico, 00902, by U. S. Mail, postage prepaid, this

23 day of October, 1979.



EDELEMIRO MARTINEZ-RIVERA